

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 41

Introduced by Brashear, 4

Read first time January 7, 1999

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-204, 28-311.01, 28-311.04, 28-504, 28-519, 28-802,
3 28-905, 28-1202, 28-1203, 28-1204.01, 28-1206 to 28-1208,
4 28-1212.03, 28-1221, 28-1343.01, 60-492, 60-6,196,
5 60-6,197, 69-2408, and 69-2420 to 69-2422, Reissue
6 Revised Statutes of Nebraska, and sections 28-201,
7 28-320.01, 28-416, and 28-1469, Revised Statutes
8 Supplement, 1998; to change punishments; to change
9 penalty classification for certain offenses; to eliminate
10 provisions relating to indeterminate sentences; to
11 harmonize provisions; to repeal the original sections; to
12 outright repeal section 83-1,105.01, Revised Statutes
13 Supplement, 1998; and to declare an emergency.
14 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-201, Revised Statutes Supplement,
2 1998, is amended to read:

3 28-201. (1) A person shall be guilty of an attempt to
4 commit a crime if he or she:

5 (a) Intentionally engages in conduct which would
6 constitute the crime if the attendant circumstances were as he or
7 she believes them to be; or

8 (b) Intentionally engages in conduct which, under the
9 circumstances as he or she believes them to be, constitutes a
10 substantial step in a course of conduct intended to culminate in
11 his or her commission of the crime.

12 (2) When causing a particular result is an element of the
13 crime, a person shall be guilty of an attempt to commit the crime
14 if, acting with the state of mind required to establish liability
15 with respect to the attendant circumstances specified in the
16 definition of the crime, he or she intentionally engages in conduct
17 which is a substantial step in a course of conduct intended or
18 known to cause such a result.

19 (3) Conduct shall not be considered a substantial step
20 under this section unless it is strongly corroborative of the
21 defendant's criminal intent.

22 (4) Criminal attempt is:

23 (a) A Class II felony when the crime attempted is a Class
24 I, Class IA, or Class IB felony;

25 (b) A Class III felony when the crime attempted is a
26 Class II felony;

27 (c) A Class IIIA felony when the crime attempted is
28 assault in the first degree under section 28-308, sexual assault in

1 the second degree under section 28-320, sexual assault of a child
2 under section 28-320.01, manufacturing, distributing, delivering,
3 dispensing, or possessing with intent to manufacture, distribute,
4 deliver, or dispense controlled substances listed in Schedule I,
5 II, or III of section 28-405 under section 28-416 except for an
6 exceptionally hazardous drug, arson in the second degree under
7 section 28-503 when the offense is committed against a family or
8 household member as defined in section 42-903, burglary under
9 section 28-507 when the offense is committed against a family or
10 household member as defined in section 42-903, incest under section
11 28-703, child abuse under subsection (5) of section 28-707, escape
12 when detained or under arrest on a felony charge under section
13 28-912, escape using force, threat, deadly weapon, or dangerous
14 instrument under section 28-912, assault on an officer in the
15 second degree under section 28-930, ~~ex~~ assault by a confined person
16 with a deadly or dangerous weapon under section 28-932, use of a
17 deadly weapon other than a firearm to commit a felony under section
18 28-1205, possession of a firearm by a fugitive from justice or
19 felon under section 28-1206, unlawful discharge of firearm under
20 section 28-1212.02, or using explosives to kill or injure any
21 person, unless personal injury or death occurs, under section
22 28-1224;

23 (d) A Class IV felony when the crime attempted is a Class
24 IIII felony not listed in subdivision (4)(c) of this section;

25 (e) A Class I misdemeanor when the crime attempted is a
26 Class IIIIA or Class IV felony;

27 (f) A Class II misdemeanor when the crime attempted is a
28 Class I misdemeanor; and

1 (g) A Class III misdemeanor when the crime attempted is a
2 Class II misdemeanor.

3 Sec. 2. Section 28-204, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 28-204. (1) A person is guilty of being an accessory to
6 felony if, with intent to interfere with, hinder, delay, or prevent
7 the discovery, apprehension, prosecution, conviction, or punishment
8 of another for an offense, he or she:

9 (a) Harbors or conceals the other; or

10 (b) Provides or aids in providing a weapon,
11 transportation, disguise, or other means of effecting escape or
12 avoiding discovery or apprehension; or

13 (c) Conceals or destroys evidence of the crime or tampers
14 with a witness, informant, document, or other source of
15 information, regardless of its admissibility in evidence; or

16 (d) Warns the other of impending discovery or
17 apprehension other than in connection with an effort to bring
18 another into compliance with the law; or

19 (e) Volunteers false information to a peace officer; or

20 (f) By force, intimidation, or deception, obstructs
21 anyone in the performance of any act which might aid in the
22 discovery, detection, apprehension, prosecution, conviction, or
23 punishment of such person.

24 (2) Accessory to crime is a Class ~~IV~~ IIIA felony if the
25 actor knows of the conduct of the other and such conduct
26 constitutes a felony of any class.

27 Sec. 3. Section 28-311.01, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 28-311.01. (1) A person commits terroristic threats if
2 he or she threatens to commit any crime of violence:

3 (a) With the intent to terrorize another;

4 (b) With the intent of causing the evacuation of a
5 building, place of assembly, or facility of public transportation;
6 or

7 (c) In reckless disregard of the risk of causing such
8 terror or evacuation.

9 (2) Terroristic threats is a Class ~~IV~~ IIIA felony.

10 Sec. 4. Section 28-311.04, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 28-311.04. Any person convicted of violating section
13 28-311.03 shall be guilty of a Class I misdemeanor, except that any
14 person convicted of violating such section who has a prior
15 conviction under such section within the last seven years for acts
16 committed against the same victim shall be guilty of a Class ~~IV~~
17 IIIA felony.

18 Sec. 5. Section 28-320.01, Revised Statutes Supplement,
19 1998, is amended to read:

20 28-320.01. (1) A person commits sexual assault of a
21 child if he or she subjects another person fourteen years of age or
22 younger to sexual contact and the actor is at least nineteen years
23 of age or older.

24 (2) Sexual assault of a child is a Class ~~IIIA~~ III felony
25 for the first offense.

26 (3) Any person who is found guilty of sexual assault of a
27 child under this section and who has previously been convicted (a)
28 under this section, (b) under section 28-319 of first degree or

1 attempted first degree sexual assault, or (c) in any other state or
2 federal court under laws with essentially the same elements as this
3 section or section 28-319 shall be guilty of a Class IC felony.

4 Sec. 6. Section 28-416, Revised Statutes Supplement,
5 1998, is amended to read:

6 28-416. (1) Except as authorized by the Uniform
7 Controlled Substances Act, it shall be unlawful for any person
8 knowingly or intentionally: (a) To manufacture, distribute,
9 deliver, dispense, or possess with intent to manufacture,
10 distribute, deliver, or dispense a controlled substance; or (b) to
11 create, distribute, or possess with intent to distribute a
12 counterfeit controlled substance.

13 (2) Except as provided in subsections (4), (5), (7), (8),
14 (9), and (10) of this section, any person who violates subsection
15 (1) of this section with respect to: (a) A controlled substance
16 classified in Schedule I, II, or III of section 28-405 which is an
17 exceptionally hazardous drug shall be guilty of a Class II felony;
18 (b) any other controlled substance classified in Schedule I, II, or
19 III of section 28-405 shall be guilty of a Class III felony; or (c)
20 a controlled substance classified in Schedule IV or V of section
21 28-405 shall be guilty of a Class IIIA felony.

22 (3) A person knowingly or intentionally possessing a
23 controlled substance, except marijuana, unless such substance was
24 obtained directly or pursuant to a valid prescription or order from
25 a practitioner while acting in the course of his or her
26 professional practice, or except as otherwise authorized by the
27 act, shall be guilty of a Class IV felony.

28 (4)(a) Except as authorized by the Uniform Controlled

1 Substances Act, any person eighteen years of age or older who
2 knowingly or intentionally manufactures, distributes, delivers,
3 dispenses, or possesses with intent to manufacture, distribute,
4 deliver, or dispense a controlled substance or a counterfeit
5 controlled substance (i) to a person under the age of eighteen
6 years, (ii) in, on, or within one thousand feet of the real
7 property comprising a public or private elementary, vocational, or
8 secondary school, a community college, a public or private college,
9 junior college, or university, or a playground, or (iii) within one
10 hundred feet of a public or private youth center, public swimming
11 pool, or video arcade facility shall be punished by the next higher
12 penalty classification than the penalty prescribed in subsection
13 (2), (7), (8), (9), or (10) of this section, depending upon the
14 controlled substance involved, for the first violation and for a
15 second or subsequent violation shall be punished by the next higher
16 penalty classification than that prescribed for a first violation
17 of this subsection, but in no event shall such person be punished
18 by a penalty greater than a Class IB felony.

19 (b) For purposes of this subsection:

20 (i) Playground shall mean any outdoor facility, including
21 any parking lot appurtenant to the facility, intended for
22 recreation, open to the public, and with any portion containing
23 three or more apparatus intended for the recreation of children,
24 including sliding boards, swingsets, and teeterboards;

25 (ii) Video arcade facility shall mean any facility
26 legally accessible to persons under eighteen years of age, intended
27 primarily for the use of pinball and video machines for amusement,
28 and containing a minimum of ten pinball or video machines; and

1 (iii) Youth center shall mean any recreational facility
2 or gymnasium, including any parking lot appurtenant to the facility
3 or gymnasium, intended primarily for use by persons under eighteen
4 years of age which regularly provides athletic, civic, or cultural
5 activities.

6 (5)(a) Except as authorized by the Uniform Controlled
7 Substances Act, it shall be unlawful for any person eighteen years
8 of age or older to knowingly and intentionally employ, hire, use,
9 cause, persuade, coax, induce, entice, seduce, or coerce any person
10 under the age of eighteen years to manufacture, transport,
11 distribute, carry, deliver, dispense, prepare for delivery, offer
12 for delivery, or possess with intent to do the same a controlled
13 substance or a counterfeit controlled substance.

14 (b) Except as authorized by the Uniform Controlled
15 Substances Act, it shall be unlawful for any person eighteen years
16 of age or older to knowingly and intentionally employ, hire, use,
17 cause, persuade, coax, induce, entice, seduce, or coerce any person
18 under the age of eighteen years to aid and abet any person in the
19 manufacture, transportation, distribution, carrying, delivery,
20 dispensing, preparation for delivery, offering for delivery, or
21 possession with intent to do the same of a controlled substance or
22 a counterfeit controlled substance.

23 (c) Any person who violates subdivision (a) or (b) of
24 this subsection shall be punished by the next higher penalty
25 classification than the penalty prescribed in subsection (2), (7),
26 (8), (9), or (10) of this section, depending upon the controlled
27 substance involved, for the first violation and for a second or
28 subsequent violation shall be punished by the next higher penalty

1 classification than that prescribed for a first violation of this
2 subsection, but in no event shall such person be punished by a
3 penalty greater than a Class IB felony.

4 (6) It shall not be a defense to prosecution for
5 violation of subsection (4) or (5) of this section that the
6 defendant did not know the age of the person through whom the
7 defendant violated such subsection.

8 (7) Any person who violates subsection (1) of this
9 section with respect to cocaine or any mixture or substance
10 containing a detectable amount of cocaine in a quantity of:

11 (a) One hundred forty grams or more shall be guilty of a
12 Class IB felony;

13 (b) At least twenty-eight grams but less than one hundred
14 forty grams shall be guilty of a Class IC felony; or

15 (c) At least ten grams but less than twenty-eight grams
16 shall be guilty of a Class ID felony.

17 (8) Any person who violates subsection (1) of this
18 section with respect to base cocaine (crack) or any mixture or
19 substance containing a detectable amount of base cocaine in a
20 quantity of:

21 (a) One hundred forty grams or more shall be guilty of a
22 Class IB felony;

23 (b) At least twenty-eight grams but less than one hundred
24 forty grams shall be guilty of a Class IC felony; or

25 (c) At least ten grams but less than twenty-eight grams
26 shall be guilty of a Class ID felony.

27 (9) Any person who violates subsection (1) of this
28 section with respect to heroin or any mixture or substance

1 containing a detectable amount of heroin in a quantity of:

2 (a) Five hundred grams or more shall be guilty of a Class
3 IB felony;

4 (b) One hundred grams or more but less than five hundred
5 grams shall be guilty of a Class IC felony; or

6 (c) Twenty-eight grams or more but less than one hundred
7 grams shall be guilty of a Class ID felony.

8 (10) Any person who violates subsection (1) of this
9 section with respect to amphetamine, its salts, optical isomers,
10 and salts of its isomers, or with respect to methamphetamine, its
11 salts, optical isomers, and salts of its isomers, in a quantity of
12 at least seven ounces or more shall be guilty of a Class II felony.

13 (11) Any person knowingly or intentionally possessing
14 marijuana weighing more than one ounce but not more than one pound
15 shall be guilty of a Class IIIA misdemeanor.

16 (12) Any person knowingly or intentionally possessing
17 marijuana weighing more than one pound shall be guilty of a Class
18 IV felony.

19 (13) Any person knowingly or intentionally possessing
20 marijuana weighing one ounce or less shall:

21 (a) For the first offense, be guilty of an infraction,
22 receive a citation, be fined one hundred dollars, and be assigned
23 to attend a course as prescribed in section 29-433 if the judge
24 determines that attending such course is in the best interest of
25 the individual defendant;

26 (b) For the second offense, be guilty of a Class IV
27 misdemeanor, receive a citation, and be fined two hundred dollars
28 and may be imprisoned not to exceed five days; and

1 (c) For the third and all subsequent offenses, be guilty
2 of a Class IIIA misdemeanor, receive a citation, be fined three
3 hundred dollars, and be imprisoned not to exceed seven days.

4 (14) Any person convicted of violating this section, if
5 placed on probation, shall, as a condition of probation,
6 satisfactorily attend and complete appropriate treatment and
7 counseling on drug abuse conducted by one of the community mental
8 health facilities as provided by Chapter 71, article 50, or other
9 licensed drug treatment facility.

10 (15) Any person convicted of violating subsection (1),
11 (2), or (3) of this section shall only become eligible for parole
12 upon the satisfactory attendance and completion of appropriate
13 treatment and counseling on drug abuse, except that any person
14 convicted of violating subsection (4), (5), (7), (8), (9), or (10)
15 of this section shall not be eligible for parole prior to serving
16 the mandatory minimum sentence.

17 (16) A person knowingly or intentionally possessing a
18 firearm while in violation of subsection (1) of this section or
19 while in possession of money used or intended to be used to
20 facilitate a violation of subsection (1) of this section shall be
21 guilty of a Class ~~IV~~ IIIA felony.

22 Sec. 7. Section 28-504, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 28-504. (1) A person commits arson in the third degree
25 if he or she intentionally sets fire to, burns, causes to be
26 burned, or by the use of any explosive, damages or destroys, or
27 causes to be damaged or destroyed, any property of another without
28 his or her consent, other than a building or occupied structure.

1 (2) Arson in the third degree is a Class IV felony if the
2 damages amount to one hundred dollars or more, unless the offense
3 is committed against a family or household member as defined in
4 section 42-903, in which case arson in the third degree is a Class
5 IIIA felony if the damages amount to one hundred dollars or more.

6 (3) Arson in the third degree is a Class I misdemeanor if
7 the damages are less than one hundred dollars.

8 Sec. 8. Section 28-519, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 28-519. (1) A person commits criminal mischief if he or
11 she:

12 (a) Damages property of another intentionally or
13 recklessly; or

14 (b) Intentionally tampers with property of another so as
15 to endanger person or property; or

16 (c) Intentionally or maliciously causes another to suffer
17 pecuniary loss by deception or threat.

18 (2) Criminal mischief is a Class IV felony if the actor
19 intentionally causes pecuniary loss in excess of three hundred
20 dollars, or a substantial interruption or impairment of public
21 communication, transportation, supply of water, gas, or power, or
22 other public service, unless the offense is committed against a
23 family or household member as defined in section 42-903, in which
24 case criminal mischief is a Class IIIA felony if the actor
25 intentionally causes pecuniary loss in excess of three hundred
26 dollars or a substantial interruption or impairment of public
27 communication, transportation, supply of water, gas, or power, or
28 other public service.

1 (3) Criminal mischief is a Class II misdemeanor if the
2 actor intentionally causes pecuniary loss in excess of one hundred
3 dollars.

4 (4) Criminal mischief is a Class III misdemeanor if the
5 actor intentionally or recklessly causes pecuniary loss in an
6 amount of one hundred dollars or less, or if his or her action
7 results in no pecuniary loss.

8 Sec. 9. Section 28-802, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 28-802. (1) A person commits pandering if such person:

11 (a) Entices another person to become a prostitute; or

12 (b) Procures or harbors therein an inmate for a house of
13 prostitution or for any place where prostitution is practiced or
14 allowed; or

15 (c) Inveigles, entices, persuades, encourages, or
16 procures any person to come into or leave this state for the
17 purpose of prostitution or debauchery; or

18 (d) Receives or gives or agrees to receive or give any
19 money or other thing of value for procuring or attempting to
20 procure any person to become a prostitute or commit an act of
21 prostitution or come into this state or leave this state for the
22 purpose of prostitution or debauchery.

23 (2) Pandering is a Class IV felony, unless the person
24 pandered is fourteen years of age or younger in which case
25 pandering is a Class IIIA felony.

26 Sec. 10. Section 28-905, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 28-905. (1) Any person who operates any motor vehicle to

1 flee in such vehicle in an effort to avoid arrest or citation for
2 the violation of any law of the State of Nebraska constituting a
3 misdemeanor, infraction, traffic infraction, or any city or village
4 ordinance, except nonmoving traffic violations, commits the offense
5 of misdemeanor operation of a motor vehicle to avoid arrest.

6 (2) Any person who operates any motor vehicle to flee in
7 such vehicle in an effort to avoid arrest for the violation of any
8 law of the State of Nebraska constituting a felony commits the
9 offense of felony operation of a motor vehicle to avoid arrest.

10 (3) Operating a motor vehicle to avoid arrest under
11 subsection (1) of this section is a Class I misdemeanor and the
12 court shall, as part of the judgment of conviction, order such
13 person not to operate any motor vehicle for any purpose for a
14 period of two years.

15 (4) Operating a motor vehicle to avoid arrest under
16 subsection (2) of this section is a Class ~~IV~~ IIIA felony.

17 (5) The court may, as a part of the judgment of
18 conviction under this section and subject to the mandatory
19 provision of subsection (3) of this section, order such person not
20 to operate any motor vehicle for any purpose for a period of up to
21 one year from the date of his or her release from imprisonment, or
22 in the case of a fine only, for a period of one year from the date
23 of satisfaction of the fine.

24 (6)(a) Any person who operates a vessel as defined in
25 section 37-1203 to flee in such vessel in an effort to avoid arrest
26 or citation for the violation of any statute punishable as a
27 misdemeanor or any city or village ordinance shall be guilty of
28 misdemeanor operation of a vessel to avoid arrest.

1 (b) Any person violating subdivision (a) of this
2 subsection shall be guilty of a Class I misdemeanor, and upon
3 conviction thereof the court shall, as part of the judgment of
4 conviction, order such person not to operate any vessel for any
5 purpose for a period of one year.

6 (7)(a) Any person who operates a vessel as defined in
7 section 37-1203 to flee in such vessel in an effort to avoid arrest
8 for the violation of any statute punishable as a felony shall be
9 guilty of felony operation of a vessel to avoid arrest.

10 (b) Any person violating subdivision (a) of this
11 subsection shall be guilty of a Class ~~IV~~ IIIA felony, and upon
12 conviction thereof the court may, as part of the judgment of
13 conviction and subject to the mandatory provision of subdivision
14 (6)(b) of this section, order such person not to operate any vessel
15 for any purpose for a period of up to two years from (i) the date
16 of his or her release from imprisonment if the sentence imposed
17 includes imprisonment or (ii) the date of satisfaction of the fine
18 if the sentence imposed includes only a fine and no imprisonment.

19 Sec. 11. Section 28-1202, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 28-1202. (1) Except as provided in subsection (2) of
22 this section, any person who carries a weapon or weapons concealed
23 on or about his or her person such as a revolver, pistol, bowie
24 knife, dirk or knife with a dirk blade attachment, brass or iron
25 knuckles, or any other deadly weapon commits the offense of
26 carrying a concealed weapon.

27 (2) It shall be an affirmative defense that the defendant
28 was engaged in any lawful business, calling, or employment at the

1 time he or she was carrying any weapon or weapons and the
2 circumstances in which such person was placed at the time were such
3 as to justify a prudent person in carrying the weapon or weapons
4 for the defense of his or her person, property, or family.

5 (3) Carrying a concealed weapon is a Class I misdemeanor.

6 (4) In the case of a second or subsequent conviction
7 under this section, carrying a concealed weapon is a Class ~~IV~~ IIIA
8 felony.

9 Sec. 12. Section 28-1203, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 28-1203. (1) Any person or persons who shall transport
12 or possess any machine gun, short rifle, or short shotgun commits a
13 Class ~~IV~~ IIIA felony.

14 (2) The provisions of this section shall not be held to
15 prohibit any act by peace officers, members of the United States
16 armed services, or members of the National Guard of this state, in
17 the lawful discharge of their duties, or persons qualified under
18 the provisions of federal law relating to the short rifle, short
19 shotgun, or machine gun.

20 Sec. 13. Section 28-1204.01, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 28-1204.01. (1) Any person who knowingly and
23 intentionally does or attempts to sell, provide, loan, deliver, or
24 in any other way transfer the possession of a firearm to a juvenile
25 commits the offense of unlawful transfer of a firearm to a
26 juvenile. The county attorney shall have a copy of the petition
27 served upon the owner of the firearm, if known, in person or by
28 registered or certified mail at his or her last-known address.

1 (2) This section shall not apply to the transfer of a
2 firearm other than the types specified in section 28-1204 to a
3 juvenile:

4 (a) From a person related to such juvenile within the
5 second degree of consanguinity or affinity if the transfer of
6 physical possession of such firearm does not occur until such time
7 as express permission has been obtained from the juvenile's parent
8 or guardian;

9 (b) For a legitimate and lawful sporting purpose; or

10 (c) Who is under direct adult supervision in an
11 appropriate educational program.

12 (3) This section shall apply to the transfer of any
13 firearm described in section 28-1204, except as specifically
14 provided in subsection (2) of section 28-1204.

15 (4) Unlawful transfer of a firearm to a juvenile is a
16 Class ~~IV~~ IIIA felony.

17 Sec. 14. Section 28-1206, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 28-1206. (1) Any person who possesses any firearm or
20 brass or iron knuckles and who has previously been convicted of a
21 felony or who is a fugitive from justice commits the offense of
22 possession of a deadly weapon by a felon or a fugitive from
23 justice.

24 (2) Such felony conviction may have been had in any court
25 in the United States, the several states, territories, or
26 possessions, or the District of Columbia.

27 (3)(a) Possession of a deadly weapon other than a firearm
28 by a felon or a fugitive from justice is a Class ~~IV~~ IIIA felony.

1 (b) Possession of a deadly weapon which is a firearm by a
2 felon or a fugitive from justice is a Class III felony.

3 Sec. 15. Section 28-1207, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 28-1207. (1) Any person who knowingly possesses,
6 receives, sells, or leases, other than by delivery to law
7 enforcement officials, any firearm from which the manufacturer's
8 identification mark or serial number has been removed, defaced,
9 altered, or destroyed, commits the offense of possession of a
10 defaced firearm.

11 (2) Possession of a defaced firearm is a Class ~~IV~~ IIIA
12 felony.

13 Sec. 16. Section 28-1208, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 28-1208. (1) Any person who intentionally removes,
16 defaces, covers, alters, or destroys the manufacturer's
17 identification mark or serial number or other distinguishing
18 numbers on any firearm commits the offense of defacing a firearm.

19 (2) Defacing a firearm is a Class ~~IV~~ IIIA felony.

20 Sec. 17. Section 28-1212.03, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 28-1212.03. Any person who possesses, receives, retains,
23 or disposes of a stolen firearm knowing that it has been or
24 believing that it has been stolen shall be guilty of a Class ~~IV~~
25 IIIA felony unless the firearm is possessed, received, retained, or
26 disposed of with intent to restore it to the owner.

27 Sec. 18. Section 28-1221, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 28-1221. (1) Any person who conveys any threat or
2 maliciously conveys to any other person false information knowing
3 the same to be false, concerning an attempt or alleged attempt
4 being made or to be made to kill, injure, or intimidate any
5 individual or unlawfully to damage or destroy any building,
6 vehicle, or other real or personal property by means of any
7 explosive material or destructive device commits the offense of
8 threatening the use of explosives.

9 (2) Threatening the use of explosives is a Class ~~IV~~ IIIA
10 felony.

11 Sec. 19. Section 28-1343.01, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 28-1343.01. (1) A person commits the offense of
14 unauthorized computer access if the person intentionally and
15 without authority penetrates a computer security system.

16 (2) A person who violates subsection (1) of this section
17 in a manner that creates a grave risk of causing the death of a
18 person shall be guilty of a Class ~~IV~~ IIIA felony.

19 (3) A person who violates subsection (1) of this section
20 in a manner that creates a risk to public health and safety shall
21 be guilty of a Class I misdemeanor.

22 (4) A person who violates subsection (1) of this section
23 in a manner that compromises the security of data shall be guilty
24 of a Class II misdemeanor.

25 Sec. 20. Section 28-1469, Revised Statutes Supplement,
26 1998, is amended to read:

27 28-1469. If a conviction under section 28-1466 is for a
28 third offense or subsequent offense thereafter, the person shall be

1 guilty of a Class ~~IV~~ IIIA felony, and the court shall, as part of
2 the judgment of conviction, order such person not to operate any
3 aircraft for any purpose for a period of one year from the date
4 ordered by the court. The order of the court shall be administered
5 upon sentencing, upon final judgment of any appeal or review, or
6 upon the date that any probation is revoked, whichever is later.

7 Sec. 21. Section 60-492, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 60-492. Any unauthorized person impersonating an officer
10 under color of the Motor Vehicle Operator's License Act shall be
11 guilty of a Class ~~IV~~ IIIA felony.

12 Sec. 22. Section 60-6,196, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 60-6,196. (1) It shall be unlawful for any person to
15 operate or be in the actual physical control of any motor vehicle:

16 (a) While under the influence of alcoholic liquor or of
17 any drug;

18 (b) When such person has a concentration of
19 ten-hundredths of one gram or more by weight of alcohol per one
20 hundred milliliters of his or her blood; or

21 (c) When such person has a concentration of
22 ten-hundredths of one gram or more by weight of alcohol per two
23 hundred ten liters of his or her breath.

24 (2) Any person who operates or is in the actual physical
25 control of any motor vehicle while in a condition described in
26 subsection (1) of this section shall be guilty of a crime and upon
27 conviction punished as follows:

28 (a) If such person (i) has not had a conviction under

1 this section in the twelve years prior to the date of the current
2 conviction or (ii) has not been convicted under a city or village
3 ordinance enacted pursuant to this section in the twelve years
4 prior to the date of the current conviction, such person shall be
5 guilty of a Class W misdemeanor, and the court shall, as part of
6 the judgment of conviction, order such person not to drive any
7 motor vehicle for any purpose for a period of six months from the
8 date ordered by the court and shall order that the operator's
9 license of such person be revoked for a like period. Such
10 revocation shall be administered upon sentencing, upon final
11 judgment of any appeal or review, or upon the date that any
12 probation is revoked. Such revocation shall not run concurrently
13 with any jail term imposed.

14 If the court places such person on probation or suspends
15 the sentence for any reason, the court shall, as one of the
16 conditions of probation or sentence suspension, order such person
17 not to drive any motor vehicle for any purpose for a period of
18 sixty days from the date of the order unless otherwise authorized
19 by an order issued pursuant to section 60-6,211.05, and such order
20 of probation shall also include, as one of its conditions, the
21 payment of a four-hundred-dollar fine;

22 (b) If such person (i) has had one conviction under this
23 section in the twelve years prior to the date of the current
24 conviction or (ii) has been convicted once under a city or village
25 ordinance enacted pursuant to this section in the twelve years
26 prior to the date of the current conviction, such person shall be
27 guilty of a Class W misdemeanor, and the court shall, as part of
28 the judgment of conviction, order such person not to drive any

1 motor vehicle for any purpose for a period of one year from the
2 date ordered by the court and shall order that the operator's
3 license of such person be revoked for a like period. Such
4 revocation shall be administered upon sentencing, upon final
5 judgment of any appeal or review, or upon the date that any
6 probation is revoked. Such revocation shall not run concurrently
7 with any jail term imposed.

8 If the court places such person on probation or suspends
9 the sentence for any reason, the court shall, as one of the
10 conditions of probation or sentence suspension, order such person
11 not to drive any motor vehicle in the State of Nebraska for any
12 purpose for a period of six months from the date of the order
13 unless otherwise authorized by an order issued pursuant to section
14 60-6,211.05, and such order of probation shall also include, as
15 conditions, confinement in the city or county jail for forty-eight
16 hours and the payment of a five-hundred-dollar fine;

17 (c) If such person (i) has had two convictions under this
18 section in the twelve years prior to the date of the current
19 conviction, (ii) has been convicted two times under a city or
20 village ordinance enacted pursuant to this section in the twelve
21 years prior to the date of the current conviction, or (iii) has
22 been convicted as described in subdivisions (i) and (ii) of this
23 subdivision a total of two times in the twelve years prior to the
24 date of the current conviction, such person shall be guilty of a
25 Class W misdemeanor, and the court shall, as part of the judgment
26 of conviction, order such person not to drive any motor vehicle in
27 the State of Nebraska for any purpose for a period of fifteen years
28 from the date ordered by the court and shall order that the

1 operator's license of such person be revoked for a like period.
2 Such revocation shall be administered upon sentencing, upon final
3 judgment of any appeal or review, or upon the date that any
4 probation is revoked. Such revocation shall not run concurrently
5 with any jail term imposed.

6 If the court places such person on probation or suspends
7 the sentence for any reason, the court shall, as one of the
8 conditions of probation or sentence suspension, order such person
9 not to drive any motor vehicle in the State of Nebraska for any
10 purpose for a period of one year unless otherwise authorized by an
11 order issued pursuant to section 60-6,211.05, and such order of
12 probation shall also include, as conditions, confinement in the
13 city or county jail for seven days and the payment of a
14 six-hundred-dollar fine; and

15 (d) If such person (i) has had three or more convictions
16 under this section in the twelve years prior to the date of the
17 current conviction, (ii) has been convicted three or more times
18 under a city or village ordinance enacted pursuant to this section
19 in the twelve years prior to the date of the current conviction, or
20 (iii) has been convicted as described in subdivisions (i) and (ii)
21 of this subdivision a total of three or more times in the twelve
22 years prior to the date of the current conviction, such person
23 shall be guilty of a Class IV felony, and the court shall, as part
24 of the judgment of conviction, order such person not to drive any
25 motor vehicle in the State of Nebraska for any purpose for a period
26 of fifteen years from the date ordered by the court and shall order
27 that the operator's license of such person be revoked for a like
28 period. Such revocation shall be administered upon sentencing,

1 upon final judgment of any appeal or review, or upon the date that
2 any probation is revoked. Such revocation shall not run
3 concurrently with any jail term imposed.

4 If the court places such person on probation or suspends
5 the sentence for any reason, the court shall, as one of the
6 conditions of probation or sentence suspension, order such person
7 not to drive any motor vehicle in the State of Nebraska for any
8 purpose for a period of one year unless otherwise authorized by an
9 order issued pursuant to section 60-6,211.05, and such order of
10 probation shall also include, as conditions, confinement in the
11 city or county jail for seven days and the payment of a
12 one-thousand-dollar fine.

13 (3) For each conviction under this section, the court
14 shall as part of the judgment of conviction make a finding on the
15 record as to the number of the defendant's prior convictions under
16 this section and under a city or village ordinance enacted pursuant
17 to this section in the twelve years prior to the date of the
18 current conviction. The defendant shall be given the opportunity
19 to review the record of his or her prior convictions, bring
20 mitigating facts to the attention of the court prior to sentencing,
21 and make objections on the record regarding the validity of such
22 prior convictions.

23 (4) For purposes of this section, the twelve-year period
24 shall be computed from the date of the prior offense to the date of
25 the offense which resulted in the current conviction and the terms
26 conviction under this section and prior conviction shall include
27 any conviction under this section as it existed at the time of such
28 conviction regardless of subsequent amendments to such section.

1 (5) Any period of revocation or order not to drive
2 imposed under this section shall be reduced by any period imposed
3 under section 60-6,206. Any period of revocation or order not to
4 drive imposed under this section shall not prohibit the operation
5 of a motor vehicle under the terms and conditions of an employment
6 driving permit issued pursuant to subsection (2) of section
7 60-6,206.

8 (6) Any person operating a motor vehicle on the highways
9 or streets of this state while his or her operator's license has
10 been revoked pursuant to subdivision (2)(c) or (2)(d) of this
11 section shall be guilty of a Class IV felony, and any person
12 operating a motor vehicle on the highways or streets of this state
13 while his or her operator's license has been revoked pursuant to
14 this section and while under the influence of alcoholic liquor or
15 of any drug shall be guilty of a Class IIIA felony. If such person
16 has had a conviction under this subsection prior to the date of the
17 current conviction under this subsection, such person shall be
18 guilty of a Class III felony.

19 (7) Any city or village may enact ordinances in
20 conformance with this section and section 60-6,197. Upon
21 conviction of any person of a violation of such a city or village
22 ordinance, the provisions of this section with respect to the
23 operator's license of such person shall be applicable the same as
24 though it were a violation of this section.

25 (8) Any person who has been convicted of driving while
26 intoxicated for the first time or any person convicted of driving
27 while intoxicated who has never been assessed for alcohol abuse
28 shall, during a presentence evaluation, submit to and participate

1 in an alcohol assessment. The alcohol assessment shall be paid for
2 by the person convicted of driving while intoxicated. At the time
3 of sentencing, the judge, having reviewed the assessment results,
4 may then order the convicted person to follow through on the
5 alcohol assessment results at the convicted person's expense in
6 lieu of or in addition to any penalties deemed necessary.

7 Sec. 23. Section 60-6,197, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 60-6,197. (1) Any person who operates or has in his or
10 her actual physical control a motor vehicle in this state shall be
11 deemed to have given his or her consent to submit to a chemical
12 test or tests of his or her blood, breath, or urine for the purpose
13 of determining the concentration of alcohol or the presence of
14 drugs in such blood, breath, or urine.

15 (2) Any peace officer who has been duly authorized to
16 make arrests for violations of traffic laws of this state or of
17 ordinances of any city or village may require any person arrested
18 for any offense arising out of acts alleged to have been committed
19 while the person was driving or was in actual physical control of a
20 motor vehicle while under the influence of alcoholic liquor or
21 drugs to submit to a chemical test or tests of his or her blood,
22 breath, or urine for the purpose of determining the concentration
23 of alcohol or the presence of drugs in such blood, breath, or urine
24 when the officer has reasonable grounds to believe that such person
25 was driving or was in the actual physical control of a motor
26 vehicle in this state while under the influence of alcoholic liquor
27 or drugs in violation of section 60-6,196.

28 (3) Any peace officer who has been duly authorized to

1 make arrests for violation of traffic laws of this state or
2 ordinances of any city or village may require any person who
3 operates or has in his or her actual physical control a motor
4 vehicle in this state to submit to a preliminary test of his or her
5 breath for alcohol concentration if the officer has reasonable
6 grounds to believe that such person has alcohol in his or her body,
7 has committed a moving traffic violation, or has been involved in a
8 traffic accident. Any person who refuses to submit to such
9 preliminary breath test or whose preliminary breath test results
10 indicate an alcohol concentration in violation of section 60-6,196
11 shall be placed under arrest. Any person who refuses to submit to
12 such preliminary breath test shall be guilty of a Class V
13 misdemeanor.

14 (4) Any person arrested as provided in this section may,
15 upon the direction of a peace officer, be required to submit to a
16 chemical test or tests of his or her blood, breath, or urine for a
17 determination of the concentration of alcohol or the presence of
18 drugs. If the chemical test discloses the presence of a
19 concentration of alcohol in violation of subsection (1) of section
20 60-6,196, the person shall be subject to the administrative
21 revocation procedures provided in sections 60-6,205 to 60-6,208 and
22 upon conviction shall be punished as provided in section 60-6,196.
23 Any person who refuses to submit to such test or tests required
24 pursuant to this section shall be subject to the administrative
25 revocation procedures provided in sections 60-6,205 to 60-6,208 and
26 shall be guilty of a crime and upon conviction punished as follows:

27 (a) If such person (i) has not had a conviction under
28 this section for refusal to submit to a chemical blood, breath, or

1 urine test in the twelve years prior to the date of the current
2 conviction or (ii) has not been convicted under a city or village
3 ordinance enacted pursuant to this section as authorized by section
4 60-6,196 in the twelve years prior to the date of the current
5 conviction, such person shall be guilty of a Class W misdemeanor,
6 and the court shall, as part of the judgment of conviction, order
7 such person not to drive any motor vehicle in the State of Nebraska
8 for any purpose for a period of six months from the date ordered by
9 the court and shall order that the operator's license of such
10 person be revoked for a like period. Such revocation shall be
11 administered upon sentencing, upon final judgment of any appeal or
12 review, or upon the date that any probation is revoked. Such
13 revocation shall not run concurrently with any jail term imposed.

14 If the court places such person on probation or suspends
15 the sentence for any reason, the court shall, as one of the
16 conditions of probation or sentence suspension, order such person
17 not to drive any motor vehicle in the State of Nebraska for any
18 purpose for a period of sixty days unless otherwise authorized by
19 an order issued pursuant to section 60-6,211.05, and such order of
20 probation shall also include, as one of its conditions, the payment
21 of a four-hundred-dollar fine;

22 (b) If such person (i) has had one conviction under this
23 section for refusal to submit to a chemical blood, breath, or urine
24 test in the twelve years prior to the date of the current
25 conviction or (ii) has been convicted once under a city or village
26 ordinance enacted pursuant to this section as authorized by section
27 60-6,196 in the twelve years prior to the date of the current
28 conviction, such person shall be guilty of a Class W misdemeanor,

1 and the court shall, as part of the judgment of conviction, order
2 such person not to drive any motor vehicle in the State of Nebraska
3 for any purpose for a period of one year from the date ordered by
4 the court and shall order that the operator's license of such
5 person be revoked for a like period. Such revocation shall be
6 administered upon sentencing, upon final judgment of any appeal or
7 review, or upon the date that any probation is revoked. Such
8 revocation shall not run concurrently with any jail term imposed.

9 If the court places such person on probation or suspends
10 the sentence for any reason, the court shall, as one of the
11 conditions of probation or sentence suspension, order such person
12 not to drive any motor vehicle in the State of Nebraska for any
13 purpose for a period of six months from the date of the order
14 unless otherwise authorized by an order issued pursuant to section
15 60-6,211.05, and such order of probation shall also include, as
16 conditions, confinement in the city or county jail for forty-eight
17 hours and the payment of a five-hundred-dollar fine;

18 (c) If such person (i) has had two convictions under this
19 section for refusal to submit to a chemical blood, breath, or urine
20 test in the twelve years prior to the date of the current
21 conviction, (ii) has been convicted two times under a city or
22 village ordinance enacted pursuant to this section as authorized by
23 section 60-6,196 in the twelve years prior to the date of the
24 current conviction, or (iii) has been convicted as described in
25 subdivisions (i) and (ii) of this subdivision a total of two times
26 in the twelve years prior to the date of the current conviction,
27 such person shall be guilty of a Class W misdemeanor, and the court
28 shall, as part of the judgment of conviction, order such person not

1 to drive any motor vehicle in the State of Nebraska for any purpose
2 for a period of fifteen years from the date ordered by the court
3 and shall order that the operator's license of such person be
4 revoked for a like period. Such revocation shall be administered
5 upon sentencing, upon final judgment of any appeal or review, or
6 upon the date that any probation is revoked. Such revocation shall
7 not run concurrently with any jail term imposed.

8 If the court places such person on probation or suspends
9 the sentence for any reason, the court shall, as one of the
10 conditions of probation or sentence suspension, order such person
11 not to drive any motor vehicle in the State of Nebraska for any
12 purpose for a period of one year unless otherwise authorized by an
13 order issued pursuant to section 60-6,211.05, and such order of
14 probation shall also include, as conditions, confinement in the
15 city or county jail for seven days and the payment of a
16 six-hundred-dollar fine; and

17 (d) If such person (i) has had three or more convictions
18 under this section for refusal to submit to a chemical blood,
19 breath, or urine test in the twelve years prior to the date of the
20 current conviction, (ii) has been convicted three or more times
21 under a city or village ordinance enacted pursuant to this section
22 as authorized by section 60-6,196 in the twelve years prior to the
23 date of the current conviction, or (iii) has been convicted as
24 described in subdivisions (i) and (ii) of this subdivision a total
25 of three or more times in the twelve years prior to the date of the
26 current conviction, such person shall be guilty of a Class IV
27 felony, and the court shall, as part of the judgment of conviction,
28 order such person not to drive any motor vehicle in the State of

1 Nebraska for any purpose for a period of fifteen years from the
2 date ordered by the court and shall order that the operator's
3 license of such person be revoked for a like period. Such
4 revocation shall be administered upon sentencing, upon final
5 judgment of any appeal or review, or upon the date that any
6 probation is revoked. Such revocation shall not run concurrently
7 with any jail term imposed.

8 If the court places such person on probation or suspends
9 the sentence for any reason, the court shall, as one of the
10 conditions of probation or sentence suspension, order such person
11 not to drive any motor vehicle in the State of Nebraska for any
12 purpose for a period of one year unless otherwise authorized by an
13 order issued pursuant to section 60-6,211.05, and such order of
14 probation shall also include, as conditions, confinement in the
15 city or county jail for seven days and the payment of a
16 one-thousand-dollar fine.

17 (5) For each conviction under this section, the court
18 shall, as part of the judgment of conviction, make a finding on the
19 record as to the number of the defendant's prior convictions under
20 this section and under a city or village ordinance enacted pursuant
21 to this section or section 60-6,196 in the twelve years prior to
22 the date of the current conviction. The defendant shall be given
23 the opportunity to review the record of his or her prior
24 convictions, bring mitigating facts to the attention of the court
25 prior to sentencing, and make objections on the record regarding
26 the validity of such prior convictions.

27 (6) For purposes of this section, the twelve-year period
28 shall be computed from the date of the prior offense to the date of

1 the offense which resulted in the current conviction and the terms
2 conviction under this section and prior conviction shall include
3 any conviction under this section as it existed at the time of such
4 conviction regardless of subsequent amendments to such section.

5 (7) Any person operating a motor vehicle on the highways
6 or streets of this state while his or her operator's license has
7 been revoked pursuant to subdivision (4)(c) or (4)(d) of this
8 section shall be guilty of a Class IV felony, and any person
9 operating a motor vehicle on the highways or streets of this state
10 while his or her operator's license has been revoked pursuant to
11 this section and while under the influence of alcoholic liquor or
12 of any drug shall be guilty of a Class IIIA felony. If such person
13 has had a conviction under this subsection prior to the date of the
14 current conviction under this subsection, such person shall be
15 guilty of a Class III felony.

16 (8) Any city or village may enact ordinances in
17 conformance with this section. Upon conviction of any person of a
18 violation of such city or village ordinance, the provisions of this
19 section with respect to the operator's license of such person shall
20 be applicable the same as though it were a violation of this
21 section.

22 (9) Any person involved in a motor vehicle accident in
23 this state may be required to submit to a chemical test of his or
24 her blood, breath, or urine by any peace officer if the officer has
25 reasonable grounds to believe that the person was driving or was in
26 actual physical control of a motor vehicle on a public highway in
27 this state while under the influence of alcoholic liquor or drugs
28 at the time of the accident. A person involved in a motor vehicle

1 accident subject to the implied consent law of this state shall not
2 be deemed to have withdrawn consent to submit to a chemical test of
3 his or her blood, breath, or urine by reason of leaving this state.
4 If the person refuses a test under this section and leaves the
5 state for any reason following an accident, he or she shall remain
6 subject to subsection (4) of this section and section 60-6,206 upon
7 return.

8 (10) Any person who is required to submit to a chemical
9 blood, breath, or urine test or tests pursuant to this section
10 shall be advised that refusal to submit to such test or tests is a
11 separate crime for which the person may be charged.

12 (11) Refusal to submit to a chemical blood, breath, or
13 urine test or tests pursuant to this section shall be admissible
14 evidence in any action for a violation of section 60-6,196 or a
15 city or village ordinance enacted pursuant to such section.

16 Sec. 24. Section 69-2408, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 69-2408. Any person who willfully provides false
19 information on an application form for a certificate under section
20 69-2404 shall, upon conviction, be guilty of a Class ~~IV~~ IIIA
21 felony, and any person who intentionally violates any other
22 provision of sections 69-2401, 69-2403 to 69-2407, and 69-2409.01
23 shall, upon conviction, be guilty of a Class I misdemeanor. As a
24 part of the judgment of conviction, the court may order the
25 confiscation of the handgun.

26 Sec. 25. Section 69-2420, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 69-2420. Any person who, in connection with the

1 purchase, transfer, or attempted purchase of a handgun pursuant to
2 sections 69-2410 to 69-2423, knowingly and intentionally makes any
3 materially false oral or written statement or knowingly and
4 intentionally furnishes any false identification intended or likely
5 to deceive the licensee shall be guilty of a Class ~~IV~~ IIIA felony.

6 Sec. 26. Section 69-2421, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 69-2421. Any licensed importer, manufacturer, or dealer
9 who knowingly and intentionally sells or delivers a handgun in
10 violation of sections 69-2401 to 69-2425 shall be guilty of a Class
11 ~~IV~~ IIIA felony.

12 Sec. 27. Section 69-2422, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 69-2422. For purposes of sections 69-2401 to 69-2425,
15 any person who knowingly and intentionally obtains a handgun for
16 the purposes of transferring it to a person who is prohibited from
17 receipt or possession of a handgun by state or federal law shall be
18 guilty of a Class ~~IV~~ IIIA felony.

19 Sec. 28. Original sections 28-204, 28-311.01, 28-311.04,
20 28-504, 28-519, 28-802, 28-905, 28-1202, 28-1203, 28-1204.01,
21 28-1206 to 28-1208, 28-1212.03, 28-1221, 28-1343.01, 60-492,
22 60-6,196, 60-6,197, 69-2408, and 69-2420 to 69-2422, Reissue
23 Revised Statutes of Nebraska, and sections 28-201, 28-320.01,
24 28-416, and 28-1469, Revised Statutes Supplement, 1998, are
25 repealed.

26 Sec. 29. The following section is outright repealed:
27 Section 83-1,105.01, Revised Statutes Supplement, 1998.

28 Sec. 30. Since an emergency exists, this act takes

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- 1 effect when passed and approved according to law.